IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

TUESDAY, THE 6TH NOVEMBER, 2007 / 15TH KARTHIKA, 1929

WP(Crl.).No. 220 of 2007(S)

PETITIONER:

DINESH,S/O. SASI,
THOTTAVARAMBIL VEEDU,KANNANMOOLA,
VANCHIYOOR VILLAGE,THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.ANCHAL C.VIJAYAN

RESPONDENTS:
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1. THE ADDITIONL CHIEF SECRETARY TO
GOVERNMENT, HOME & VIGILANCE DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR & DISTRICT
MAGISTRATE,THIRUVANANTHAPURAM.

3. THE DEPUTY COMMISSIONER OF POLICE
(LAW & ORDER) TRIVANDRUM CITY.

4. THE SUPERINTENDENT OF POLICE,
CENTRAL PRISON, THIRUVANANTHAPURAM.

BY SPL.GOVERNMENT PLEADER & LIAISON OFFICER SRI.K.K.RAVINDRANATH.

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD

ON 23/10/2007, THE COURT ON 06/11/2007 DELIVERED THE

FOLLOWING:

APPENDIX

(WP(Crl) No.220 OF 2007)

PETITIONER'S EXHIBITS:

Ext.P1: Copy of detention order dtd.13.6.2007 passed by the District Magistrate, Thiruvananthapuram.

Ext.P2: Copy of detention order dtd.25.6.2007.

Ext.P3: Copy of the prescriptions dtd.6.12.2004.

Ext.P4: Copy of the medical prescriptions dtd.7.1.2005.

Ext.P5: Copy of the discharge summary dtd.12.2.2005.

Ext.P6: Copy of the discharge summary dtd. 21.2.2005.

Ext.P7: Copy of the discharge card dtd.22.3.2005.

Ext.P8: Copy of the discharge summary dtd.23.6.2007.

Ext.P9: Copy of the treatment certificate dtd.19.6.2007.

Ext.P10: copy of the petition submitted by the petitioner for revoking the detention order.

Ext.P11: Copy of the Order dtd.17.9.2007 issued by the 1st respondent.

Ext.P12: Copy of order dtd.23.6.2007 issued to the 4th respondent.

Ext.P13: Copy of the communication dtd.17.9.2007 issued by R1.

Ext.P14: Copy of the C.T.Scan Report dtd.27.9.2007 issued by the Department of Radio Diagnosis.

Ext.P15: Copy of the representation submitted by the defacto complainant in Crime No.37/2007 of Contonment Police Station dtd.19.3.2007.

Ext.P16: Copy of the report of M.R.I.study of Lumba Sacral Spine of the detenue dtd.4.10.2007.

RESPONDENTS' EXHIBITS:

Ext.R1(a): Copy of letter dtd. 8.10.2007 sent by the Supdt. of Central Prison to the 1st respondent.

Ext.R1(b): Copy of certificate dtd.9.10.2007 issued by the Supdt., Sanitorium for Chest Disease, Thiruvananthapuram.

Ext.R1(c): Copy of the reply dtd.17.9.2007.

Ext.R1(d): Copy of the report dtd.13.8.2007.

Ext.R1(e): Copy of letter dtd.9.10.2007.

Ext.R1(f): Copy of the Certificate issued by the Chief Medical Officer.

Ext.R2(a): Copy of the Detention Order.

Ext.R2(b): Copy of the grounds of detention.

Ext.R2(c): Copy of the Govt.Order dtd.25.6.2007.

-True Copy-

P.A.to Judge.

P.R.RAMAN & V.K.MOHANAN, JJ.

W.P.Crl.No. 220 of 2007

Dated this the day of November, 2007

J U D G M E N T

Mohanan,J:

The above writ petition is filed with a prayer to issue a writ of habeas corpus directing the respondents to produce the body corpus of the petitioner's brother Sri.Rajesh who is detained in the Central Prison, Thiruvananthapuram and to set him free from the illegal confinement. The petitioner has also prayed for the issue of a writ of certiorari quashing Exts.P1, P2 and P11 proceedings.

2. The allegations and averments in the writ petition are as follows:-

The petitioner's brother, Sri.Rajesh is detained as per Ext.P1 order issued by the second respondent under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Ordinance, 2007 (hereinafter referred for short as 'KAAPO, 2007' only). As per Ext.P2 order, the first respondent has confirmed Ext.P1 order of detention

passed by the second respondent. According to the petitioner, on the strength of Ext.P1 order issued by the second respondent, the petitioner's brother was arrested on 15.6.2007 and he is still under detention. It is further averred that his brother is totally innocent and he is not involved in any criminal case and contra-allegations are false and fabricated with an intention to harass the detenu and detain him under the provisions of KAAPO, 2007. According to the petitioner, the second respondent can pass an order of detention under Section 3(1) of KAAPO, 2007, only on getting credible information from a Police Officer, not below the rank of Superintendent of Police with regard to the activities of any 'Known Goonda' or 'Known Rowdy'. But, in this case, according to the petitioner, the information is furnished by the Deputy Commissioner of Police, and that too was without any application of mind, since the detenu was admitted in the hospital from 12.6.2007 onwards and the detenu was taken to the jail after forcibly discharging him from the hospital while he was

undergoing rest on the basis of medical advice given by the Doctor for severe back pain with a radiating pain on the left side due to sacral joint arthritis with features of ankyloring spondylitis and straightening of lumbar spine. It is also averred that besides the above complaint, the detenu has high blood pressure and palpitation. According to the petitioner, the detenu, while undergoing treatment in Medical College Hospital, Thiruvananthapuram with traction and other supportive measures, was taken into custody towards the execution of the detention order issued by the second respondent. It is also the case of the petitioner that even after the execution of the detention order, the detenu was undergoing treatment and the health condition of the detenu is very bad and he cannot move from the bed even for ordinary avocations and therefore, the assistance of a bye-stander is absolutely necessary in the jail, but the jail authorities are not providing the same. In support of the above contentions, the petitioner has produced Exts.P3 to P9 documents.

3. On the strength of the above documents and the adverse health conditions of the detenu, the petitioner submits that in such a situation, the conclusion arrived at by the second respondent, that if the detenu remains at large, he would involve in anti-social activities with regard to public peace and order which would directly or indirectly cause harm, danger or alarm or a feeling of insecurity or cause threat to public life and property among the general public or result in grave or wide spread danger to life/public health in Thiruvananthapuram city, is absolutely incorrect and the second respondent arrived at such a conclusion without any application of mind. The further case of the petitioner is that by filing Ext.P10 petition, a request was made to the Government to revoke Exts.P1 and P2 orders and to release the detenu. But, according to the petitioner, no decision was taken on such petition and hence the detenu is still continuing in jail without getting proper medical care and attention. It is further averred that alleging non-consideration of Ext.P10

petition, the petitioner had earlier approached this Court by filing writ petition W.P(C) No.26548 of 2007 and during the course of hearing of the above writ petition, the Government Pleader had produced an order which is marked as Ext.P11 passed by the Government upon Ext.P10 petition. However, according to the petitioner, Ext.P11 is an order passed under Section 11 (1) of KAAPO, 2007, confirming the detention order and it is not an order issued in exercise of the powers under Section 13 of the KAAPO, 2007. It is further submitted by the petitioner that so far, no orders have been passed by the Government on the request for revocation of the detention order under Section 13 of KAAPO,2007 and the same is still pending before the Government. According to him, the observation made by the second respondent in Ext.P1 is that the detenu has been involved in violent crime over the years which included rioting, grievous hurt and attempt to murder, but no such offence under Section 307 of the Indian Penal Code is seen charged in any of the crimes referred to in

Ext.P1. According to the petitioner, the illegal detention of his brother is due to high handed activities and the same will amount to infringement of fundamental rights of the detenu under Articles 14, 19(1)(d), 21 and 22(5) of the Constitution of India and therefore, the petitioner prays for urgent release of his brother, the detenu. During the pendency of the above writ petition, by filing I.A.No.13270 of 2007, the petitioner has prayed for an interim direction directing the respondents to provide adequate and sufficient treatment to the brother of the petitioner, the detenu. By filing another I.A. (No.13601/2007), the petitioner prays for a direction directing the respondents to release the detenu forthwith. In support of the prayers in the above interlocutory applications, certain documents are also produced.

4. The second respondent has filed a detailed counter affidavit contradicting each and every contention and other allegations raised by the petitioner in the above writ petition. In the counter affidavit, the

second respondent has stated that credible information was received as per the report of the Deputy Commissioner of Police (L&O), Thiruvananthapuram City to the effect that the detenu is a 'Known Rowdy' as defined in Section 2(p) of the KAAPO, 2007. It is stated that the said report contained information about the involvement of the detenu Sri.Rajesh in six criminal cases, out of which five are registered in Petta Police station and one crime is registered in Cantonment Police station, Thiruvananthapuram. The counter affidavit filed by the second respondent shows that the following crimes are registered against the detenu:-

1. Crime No.39/07 u/Ss.341,323,324,427 r/w.34 I.P.C.
2. Crime No.23/05 u/Ss.341,323 and 34 I.P.C.
3. Crime No.169/01 u/Ss.341,326 and 34 I.P.C and S.27 of the Arms Act.
4. Crime No.7/01 u/Ss.143,147,149,448,332,333 and 294 (b) I.P.C.
5. Crime No.88/01 u/Ss.447,427,506(ii) and 34 I.P.C.
6. Crime No.37/07 u/Ss.326,427and 34 I.P.C. and Section 27 of the Arms Act.

According to the second respondent, these crimes are registered for offences coming under Chapters XVI and

XVII of the Indian Penal Code as also under Section 27 of the Arms Act, span over the period from 2001 to 2007. The counter affidavit further says that the report of the Deputy Commissioner of Police (L&O) under KAAPO, 2007 dated 9.6.2007 shows that Sri.Rajesh is an active criminal, currently involved in anti-social activities prejudicial to the maintenance of the public peace and order and he is a 'Known Rowdy' as defined in the KAAPO,2007. It has also been reported that if the detenu Sri.Rajesh is allowed to move about freely, he will in all probability indulge in activities prejudicial to the maintenance of public peace and order. The counter affidavit further says that on examination and evaluation of the report of the Deputy Commissioner of Police (L&O) and on appreciation of connected records, the second respondent has satisfied that the detenu Sri.Rajesh is a 'Known Rowdy' as defined in KAAPO, 2007 and if he remains at large, he would indulge in anti-social activities with regard to public peace and order which would directly and indirectly cause harm,

danger or alarm or a feeling of insecurity or cause threat to public life and property among the general public or result in grave or widespread danger to life/public life in Thiruvananthapuram City and therefore, on his satisfaction, the second respondent in exercise of powers conferred upon him under Section 3(1) of the KAAPO,2007 issued the detention order along with the grounds of detention. Exts.R2(a) and R2(b) are produced along with the counter affidavit. Ext.R2(a) is the detention order and Ext.R2(b) is the ground on which the detention order was issued. From the endorsement contained in Ext.R2(a), it is clear that the detenu has received a copy of the order. Ext.R2(b) also contained the signature of the detenu and there is also an endorsement to the effect that the documents and orders were received by Sri.Rajesh, the detenu. As per Ext.R2(c) order of the Government, the detention order issued by the second respondent has been confirmed by the Government under Section 3(3) of the KAAPO, 2007.

5. The allegation of the petitioner is that Ext.P1 order and Ext.R2(c) order were issued without application of mind as the detenu was undergoing treatment for various diseases. From the medical records also, it is seen that he was undergoing treatment from 2004 onwards. But, as seen from the counter affidavit, one crime is registered against him in the year 2005 by the Pettah Police and two crimes registered in the year 2007 by Pettah and Cantonment Police respectively and according to the second respondent, the above facts itself are sufficient to show that in spite of his alleged undergoing treatment, he is involved in criminal activities and if he is allowed to remain at large, he would indulge in anti-social activities. Thus, according to the second respondent, the order of detention is perfectly legal and valid.

6. We have heard Mr.Anchal.C.Vijayan, learned counsel appearing for the petitioner as well as Mr.K.K.Ravindranath, Special Government Pleader and Liaison Officer appearing for the respondents.

7. During the hearing of the above matter, the learned counsel for the petitioner would fairly submit that he is not challenging the validity or vires of the above Ordinance. On the other hand, after inviting our attention to the preamble to the Ordinance, the learned counsel for the petitioner submits that the object behind the promulgation of the Ordinance is to prevent and control the anti-social activities in the State of Kerala, but in the facts and circumstances involved in the case, according to him, no such object is behind Exts.P1 and P2 orders. According to counsel for the petitioner, the detenu is suffering from various diseases and even while he was arrested in execution of the detention order, he was bedridden in the Medical College Hospital from where he was forcibly discharged and taken into custody. So, according to the petitioner, a person having several health problems cannot involve in anti-social activities and therefore, by misusing the provisions of the KAAPO, 2007, the respondents illegally detained the detenu. According to counsel for the

petitioner, how can a person, who is a bedridden patient and seeks help of others for his daily avocation, involve in anti-social activities. In support of the above contentions, the learned counsel took us through the various documents furnished by him along with the writ petition and also the interlocutory applications filed subsequently. Counsel further argued that the crimes, which are mentioned in the impugned orders and also in the counter affidavit, have no nexus with the detention order and also no purposes sought to be served. According to counsel, almost all the crimes are pertaining to the year 2001 and there are only three cases pertaining to the year 2007 and that itself is sufficient to show that there is no application of mind by the authorities who exercised the powers under Section 3(1) and (3) of the KAAPO, 2007. The above contentions of learned counsel for the petitioner are not acceptable in the light of the facts and circumstances involved in the case. Even if it is admitted as true, that the detenu is suffering from ill-health, the physical presence of an

accused is not necessary for the operation of criminal activities nowadays. The persons, who have criminal back ground or experience, can operate the criminal activities with remote control or on the basis of pre-planned design. In the present case, as rightly pointed out by Mr.K.K.Raveendranath, the detenu was involved in several crimes span over the period from 2001-2007. It is also pointed out by the Liaison Officer that in spite of the contention that the detenu was undergoing treatment from 2004 onwards, he was involved in one crime within the limits of Pettah Police Station during the year 2005 and in another two crimes during the year 2007, one in Pettah and another in Cantonment Police Station limits. The above facts are sufficient to justify the conclusion arrived at by respondent Nos.1 and 2 to the effect that the detenu is coming within the definition of 'Known Rowdy' and if he is allowed to remain at large, he would indulge in anti-social activities with regard to public peace and order which would directly or indirectly cause harm, danger or

alarm or a feeling of insecurity or cause threat to public life and property among the general public in Thiruvananthapuram City. The criminal history of the detenu ensures the correctness of application of mind by the authorities concerned and according to us, they have rightly come into such conclusion as envisaged by the provisions of the KAAPO, 2007.

8. On the strength of Ext.P15 produced along with I.A.No.13270 of 2007, the counsel for the petitioner argued that the satisfaction arrived at by the second respondent is not correct since the petitioner has no involvement in Crime No.37/2007 of the Cantonment Police Station. In Ext.P15, it is stated that the detenu was not involved in the alleged incident. This Court is not in a position to accept Ext.P15 in its face value at this stage. The entire facts and circumstances involved in Crime No.37/2007 and the nature of evidence going to be adduced at the time of trial are not available at this stage. Legality, correctness and propriety of Ext.P15 are to be scrutinised and appreciated at the time of trial

and therefore, on the basis of Ext.P15, it cannot be said that the petitioner was falsely implicated in the above crime or else, that there is any illegality in exercising powers conferred upon by the second respondent as per the provisions of KAAPO, 2007.

9. Yet another contention advanced by counsel for the petitioner is that the materials are not furnished to the detenu. In support of the above contention, the counsel invited our attention to Ext.R2(b) and submits that there is no endorsement of the detenu regarding the receipt of those papers. It is also pointed out that Ext.R2(a) contained an endorsement by the detenu and his signature. The second respondent in his counter affidavit has specifically stated that the copy of the detention order dated 13.6.2007 along with grounds of detention were served on the detenu at the time of his arrest. Along with counter affidavit, true copies of the detention order and the grounds of detention were thus served on the detenu at the time of his arrest on 15.6.2007, receipt of acknowledgment etc. are

produced. Ext.R2(b) (page No.5) shows the signature of the detenu and an endorsement is made to the effect that the order and the documents were received by the detenu. In view of the above facts and the documents produced by the second respondent, the contention of counsel that the materials were not furnished to the detenu, cannot be accepted. The first respondent has filed a counter affidavit in I.A.No.13270 of 2007 in the above writ petition in which certain documents were also produced which shows that admittedly proper care and treatment has been given to the detenu and the same will be continued as and when required. The learned counsel further submits that though the Advisory Board was approached by the detenu, no order has been passed under Section 9 of the KAAPO, 2007. The Liaison Officer made available to us the back files of the case and on examination of the records, we are satisfied that in exercise of powers conferred upon the Advisory Board under Section 10, by a proceedings and detailed order in R.C.No.13 of 2007, the Advisory Board

has formulated its opinion under Section 10 of the KAAPO, 2007 on the reference made under Section 9 of the Ordinance and according to the Advisory Board, they are of the unanimous opinion that the detention order is valid and there is sufficient ground to detain the detenu from 13.6.2007 and also sufficient reason to continue the detention for a period of six months from the date of detention.

10. In the light of the above facts and circumstances and upon the discussion, we are of the view that there is no illegality or arbitrariness in the detention order issued by the second respondent and the confirmation order passed by the Government, as such there is no merit in the writ petition.

11. Finally, Sri.Anchal.C.Vijayan, learned counsel for the petitioner submits that Ext.P10 petition for revocation of the detention order submitted by the petitioner herein for the release of the detenu Sri.Rajesh is pending before the Government and so far, the Government has not issued any order in exercise of the

powers conferred on it under Section 13 of the KAAPO, 2007 and hence he prays for a direction to the Government to dispose of Ext.P10. Ext.P1 order of detention was dated 13.6.2007 and the detenu was arrested on 15.6.2007. From Ext.P10, it appears that the same was submitted before the Government on 24.8.2007 and not disposed of so far. Under the above circumstances, we are of opinion that the Government can be directed to dispose of Ext.P10, as expeditiously as possible. In the result, the first respondent is directed to consider Ext.P10 and to dispose of the same on merit, expeditiously. Subject to the above, the writ petition is dismissed.

P.R.RAMAN,
Judge

V. K.MOHANAN,
Judge

Mbs/

V.K.MOHANAN, J.

O.P.NO. OF 2001

J U D G M E N T

DATED: -0-2007